

REMARKS

The Office communication mailed June 18, 2009 indicated that the reply filed on March 24, 2009 was not fully responsive to the prior Office Action because, according to the Examiner, Applicants did not adequately reply to the Provisional Obviousness Type Double Patenting Rejection, and a request to hold a rejection in abeyance is not a proper response to a rejection. In order to expedite allowance of the claims, Applicants submit the following:

I. Claim Amendments

Claims 1-5, 8-10, 12-16, 24-46, and 53-59 are pending in the instant application. Claims 1-5 are withdrawn from consideration. With this amendment, Claim 8 is amended to correct minor typographical errors. No new matter is added by this amendment. Upon entry of this amendment, Claims 8-10, 12-16, 24-46, and 53-59 will be under examination.

II. Correction

Applicants provide the following remarks to correct and replace paragraph 1 of Section VI at page 15 of the reply filed on March 24, 2009. With this correction, Applicants believe that the reply filed on March 24, 2009 is now fully responsive to the September 24, 2008 Office Action (the "Office Action").

In the Office Action, Claims 8-10, 12-16, 25, 43, 54, and 55 were rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1-16 of U.S. Patent No. 6,531,121. Claims 8, 13-16, 31, 32, and 43 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 35, 37, 38, and 50-60 of copending Application No. 10/188,905. Claims 8, 15, 16, 28-31, 33, 34, 36, 39, 53, and 54 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1, 14, 16-21, 25, 28, 29, 61, 62, and 63 of copending Application No. 10/185,841 in view of Brines *et al.*, 2000. PNAS USA 97:10526-10531.

In response, without agreeing to the merits of the rejections in the Office Action, and solely to expedite allowance of the claims, Applicants submit herewith a Terminal Disclaimer Under 37 C.F.R. § 1.321(e) ("Terminal Disclaimer") executed on behalf of The Kenneth S. Warren Institute, Inc., the Assignee of the above-identified application.

Applicants respectfully assert that the submission of the Terminal Disclaimer obviates these rejections under the judicially created doctrine of obviousness-type double patenting, and respectfully request their withdrawal.

CONCLUSION

Applicants respectfully request entry of the Amendments and remarks made herein into the file of the instant application. If the Examiner has not yet entered the amendments and reply filed on March 24, 2009 into the file of the instant application, we also request its entry into the file of the application. Applicants estimate that the amendments and remarks made herein place the application in condition for allowance.

Respectfully submitted,

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Enclosures